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08/777,032 12/30/96 CATANZARO

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IM41/0410

EXAMINER

GRAHAM, G

ART UNIT

PAPER NUMBER

1744

4

DATE MAILED:

04/10/98

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 2-4-98 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☒ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☒ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐

Part II SUMMARY OF ACTION

1. ☒ Claims 1-26 are pending in the application.

Of the above, claims 1-11 and 18-23 are withdrawn from consideration.

2. ☐ Claims \_\_\_\_\_ have been cancelled.

3. ☐ Claims \_\_\_\_\_ are allowed.

4. ☒ Claims 12-17 and 24-26 are rejected.

5. ☐ Claims \_\_\_\_\_ are objected to.

6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

Art Unit: 1744

## **DETAILED ACTION**

### ***Election/Restriction***

Applicant's election without traverse of figures 2 and 3 species in Paper No. 3 is acknowledged.

### ***Claim Rejections - 35 USC § 112***

Claims 12-17 and 24-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, line 13, there is no antecedent basis for "the fingers".

In claim 13, line 3, there is no antecedent basis for "the shape".

In claim 24, line 6, there is no antecedent basis for "the shape".

Art Unit: 1744

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-17 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barre '889 in view of Vandeventer '275.

The patent to Barre discloses the invention substantially as claimed, with the exception of a cover to fit over the bristled head of the toothbrush.

The patent to Vandeventer discloses a toothbrush (fig. 1) which employs a cover to fit over the bristled head of the toothbrush.

It would have been obvious to one of skill in the art to employ a cover with the toothbrush of Barre, as clearly suggested by Vandeventer, to provide protection for the bristles when the brush is not in use. Use of covers for toothbrushes is notoriously well known. It appears the cover will perform all the functions as laid out in part (c) of claim 12.

Art Unit: 1744

With respect to claim 15, it appears that a cover used with Barre, as suggested by Vandeventer, will "match" the body of the animate object, at least as far as such defines any particular structure. Furthermore, given that Barre suggests that the overall brush and stand assembly is to resemble a figure or character, it appears obvious to one of skill in the art that any cover used with the Barre brush could indeed be formed to facilitate said resemblance to such figure. It appears entirely obvious that the cover could be made to have a face or the like to aid in the resemblance to a particular character or figure.

With respect to claim 17, while Barre suggests a man or cartoon character for the shape of the brush to resemble, it appears obvious to one of skill in the art that other various shapes could be used, including a woman or female human. It would have been obvious to one of skill in the art to make the brush of Barre resemble other characters as desired, including as claimed, as a mere choice of design. There appears no criticality to the particular figure or character chosen.

Claims 12-14 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perrine '166 in view of Vandeventer '275.

The patent to Perrine '166 discloses the invention substantially as claimed, with the exception of a cover to fit over the bristled head of the toothbrush.

Art Unit: 1744

The patent to Vandeventer discloses all of the above recited subject matter.

It would have been obvious to one of skill in the art to employ a cover with the toothbrush of Perrine, as clearly suggested by Vandeventer, to provide protection for the bristles when the brush is not in use. Use of covers for toothbrushes is notoriously well known. It appears the cover will perform all the functions as laid out in part (c) of claim 12.

***Allowable Subject Matter***

Claim 24 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Gary K. Graham at 703-308-1270. The Examiner can normally be reached Tuesday through Friday.

Art Unit: 1744

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Robert Warden, can be reached on (703) 308-2920. The fax phone number for this Group is (703) 305-7719.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0651.



GARY K. GRAHAM  
PRIMARY EXAMINER  
GROUP 1700

April 6, 1998  
gkg